

FREEMAN, NOOTER & GINSBERG
ATTORNEYS AT LAW

LOUIS M. FREEMAN
THOMAS H. NOOTER*
LEE A. GINSBERG

NADJIA LIMANI
OF COUNSEL

CHARLENE RAMOS
OFFICE MANAGER

75 MAIDEN LANE
SUITE 503
NEW YORK, N.Y. 10038

(212) 608-0808
TELECOPIER (212) 962-9696

February 27, 2018

Honorable Eric N. Vitaliano
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Gary Kershner
13 CR 452 (ENV)

Dear Judge Vitaliano:

I write to update the court and request new date for submission of a Rule 33 motion and sentencing of Mr. Kershner. We have received the probation report and have reviewed it. There are still many materials to collect in order for me to prepare the sentencing memorandum. In addition, when the court appointed me, it was for the purpose of sentence and to look into various issues raised by Mr. Kershner regarding, principally, ineffective assistance of counsel. I began working on this project which entails three oversized boxes of discovery in addition to the trial transcripts. In addition, since that time I tried three cases in the Southern District of New York, all at least two weeks long and involving, terrorism, double homicide and child pornography and, a 5 week fraud trial involving millions of documents.

We are now in the process of interviewing witnesses and preparing affidavits for a Rule 33 motion based on ineffective assistance. Therefore, I request a date in late March for motions. (The government points out that when Mr. Stein, counsel for Mr. Sahachaisere, filed both a Rule 29 and Rule 33 motion, Mr. Dubin, on behalf of Mr. Kershner joined in. Those motions were denied by the court. Therefore, they do not believe any further post trial, pre-sentence relief exists for Mr. Kershner and his remedy for ineffective assistance of counsel should be brought after his direct appeal as a Writ of Habeas Corpus under Section 2255.)

I also request a date in late April for sentencing so that the motions can be briefed by the government and decided by the court. The government has no objection except as stated above.

Respectfully,

/S/ Lee Ginsberg
Lee Ginsberg

cc: Mark Bini, AUSA
Joel Stein, Esq.